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2d Session

SENATE

REPORT
101-505

DESIGNATING A SEGMENT OF THE LOWER MERCED RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

OCTOBER 5 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 4687]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 4687) to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" wherever it appears and inserting in lieu thereof, "subparagraph"; and

(3) by adding the following new subparagraphs at the end thereof:

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure, consisting of approximately 8 miles, as generally depicted on the map entitled 'Merced Wild and Scenic River', dated April, 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the point of maximum flood control storage of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the

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Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriate such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments on the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

SEC. 2. STUDY OF THE NORTH FORK OF THE MERCED RIVER.

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

PURPOSE OF THE MEASURE

The purposes of H.R. 4687, as ordered reported, are to amend the Wild and Scenic Rivers Act to designate an eight-mile segment of the lower Merced River in California as a component of the Wild and Scenic Rivers System, and to designate the North Fork of the Merced as a river to be studied for potential addition to the Wild and Scenic Rivers System.

BACKGROUND AND NEED

In 1987, Public Law 100–149 designated 71 miles of the main stem of the Merced River in California and 43 miles of the South Fork of the Merced River as components of the Wild and Scenic Rivers System. That legislation also designated an eight-mile segment of the lower Merced River as a Wild and Scenic Study River. H.R. 4687, as ordered reported, adds that eight-mile segment as a component of the Wild and Scenic Rivers System.

LEGISLATIVE HISTORY

H.R. 4687, introduced by Congressman Condit, passed the House of Representatives by a voice vote on September 17, 1990. Companion legislation, S. 2555, was introduced in the Senate by Senator Cranston on May 1, 1990. Senator Wilson was added as a cosponsor on May 2, 1990. The Subcommittee held a hearing on S. 2555 on June 26, 1990.

At the business meeting on September 26, 1990, the Senate Committee on Energy and Natural Resources ordered H.R. 4687, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on September 26, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 4687, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Wirth [1]	
Mr. Conrad	
Mr. Heflin [1]	
Mr. Rockefeller	
Mr. Akaka [1]	
Mr. McClure	
Mr. Hatfield [1]	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles [1]	
Mr. Burns	
Mr. Garn [1]	
Mr. McConnell [1]	

[1] Indicates voted by proxy.

Committee Amendment

During the consideration of H.R. 4687, the Committee adopted an amendment in the nature of a substitute. In addition to making several technical, clarifying and conforming changes, the amendment deletes the elevation reference for the point of maximum flood control storage at Lake McClure, clarifies that the construction and operation of the Saxon Creek water supply project is to be in accordance with other applicable laws in addition to section 7 of the Wild and Scenic Rivers Act, and modifies the mineral withdrawal language in section 1 to parallel the withdrawal language in section 9(a)(iii) of the withdrawal language in section 9(a)(iii) of the Wild and Scenic Rivers Act. The amendment is explained in detail in the section-by-section analysis, below.

Section-by-Section Analysis

Section 1 amends section 3(a) of the Wild and Scenic Rivers Act to designate eight miles of the lower Merced River in California as a component of the Wild and Scenic Rivers System. Approximately five miles of the segment would be designated as "recreational"; the remainder would be designated as "wild." Paragraph (A) provides that the segment is to begin 300 feet upstream of the confluence of the Merced River and Bear Creek and is to end at the point of maximum flood control storage of Lake McClure. The Committee

notes that downstream boundary was drawn to ensure that the designation of the river segment does not interfere with the flood control purposes of the New Exchequer Dam.

The section also adds a new paragraph (b) to clarify that the designation of the lower Merced as a component of the Wild and Scenic Rivers System will not preclude construction and operation of the Saxon Creek water supply project to Mariposa County. The amendment directs the Secretary of the Interior to permit such operation and construction to the extent permitted by section 7 of the Wild and Scenic Rivers Act and other applicable laws.

Finally, the section adds a new paragraph (C), which withdraws the recreational and scenic segments of the Merced River and the South Fork of the Merced River from all forms of appropriation under the mining laws and from operation of the mineral leasing laws. This paragraph is identical to the mineral withdrawal for "wild" river segments pursuant to section 9 (a) (iii) of the Wild and Scenic Rivers Act.

Section 2 designates the North Fork of the Merced River as a Wild and Scenic Study River. The river segment is approximately 15 miles in length.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 19, 1990.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2555, a bill to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System, as ordered reported by the Senate Committee on Energy and Natural Resources, September 19, 1990. CBO estimates the implementation of this bill would cost the federal government about $1 million over the next five years. No additional costs would be incurred by state and local governments if this bill is enacted.

S. 2555 would designate an eight-mile segment of the Lower Merced River as part of the wild and scenic rivers system. The bill also would designate a segment of the North Fork Merced River in California for potential addition to this system. Based on information provided by the Department of the Interior (DOI), we estimate that these designations would result in additional federal costs of about $140,000 per year for the next five years for management, planning and improvement of facilities. In addition, we estimate that DOI probably would spend $250,000 for land acquisition in fiscal year 1991, subject to the appropriation of the necessary funds. The department plans to acquire additional lands through exchange. If they are unsuccessful, acquisition costs would increase by about $370,000.

In addition, this bill would block new mineral claims or leases on public lands within segments of the main stem of the Merced River and the South Fork Merced River that are designated components of the wild and scenic river system and administered as recreational or scenic. This provision would not affect valid existing mineral rights. We would not expect any significant loss of federal receipts as a result of this provision.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marjorie Miller, who can be reached at 226–2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4687. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4687, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 13, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2555. On June 14, 1990, the Committee requested legislative reports from the Federal Energy Regulatory Commission. On July 11, 1990, the Committee received the report from the Federal Energy Regulatory Commission. The reports from the Department of the Interior and the Office of Management and Budget had not been received at the time the report on H.R. 4687 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, July 11, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSTON: Thank you for your letter of June 15, 1990, requesting comments on S. 2555, a bill to designate a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System. Enclosed is a Commission staff report on the bill, which I hope will be useful in consideration of S. 2555.

I appreciate your inquiry. If I can be of further assistance in this matter, please do not hesitate to contact me.

Yours truly,

MARTIN L. ALLDAY.

Enclosure.

REPORT ON S. 2555

SUMMARY OF S. 2555

On May 1, 1990, Senator Cranston introduced S. 2555. Section 1 of the bill would amend Section 3(a) of the Wild and Scenic Rivers Act (Rivers Act), 16 U.S.C. §1274(a), to add to the list of component rivers of the Wild and Scenic Rivers System (System) an eight-mile segment of the main stem of the Merced River from a point 300 feet upstream of its confluence with Bear Creek downstream to a point of maximum flood control storage of Lake McClure (elevation 867 feet mean sea level).

Following the enactment of S. 2555, the Secretary of the Interior (Secretary) would be required, pursuant to Section 1 of the bill, to administer the eastern 4 miles of the 8-mile segment as "wild" and the western 4 miles of the segment as "recreational," as the quoted terms are described under Section 2(b) (1) and (3) of the Rivers Act, 16 U.S.C. §§1273(b) (1) and (3), respectively. Section 1 would also require the Secretary to fulfill the requirements of Section 3(b) of the Rivers Act, to classify, establish boundaries, and prepare development plans for the 8-mile segment, by appropriate revisions of the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management.

Section 2 of the bill withdraws the recreational segment of the main stem of the Merced River (from the west boundary of the Mineral King Mine, from the normal high water mark on the south side of the river to the northern margin of the Yosemite Railroad grade on the north side of the river, a distance of 22 miles), and the scenic segment of the South Fork of the Merced River (between normal high water marks on either side of the river, from 1.5 miles upstream of Hite Cove to 0.5 downstream of Hite Cove, a distance of 2 miles), from settlement, location, entry and appropriation under the public land laws, including the mining laws. The described segments are withdrawn under Section 2 in addition to the "wild" segments of the Merced River, which are statutorily withdrawn by Section 9(a)(iii) of the Rivers Act, 16 U.S.C. §1280(a)(iii).

Section 3 of the bill would authorize the Secretary to permit the construction and operation of certain pumping facilities by Mariposa County Water Agency at the Saxon Creek Project.

EFFECT OF S. 2555, IF ENACTED, ON APPLICATIONS FILED WITH THE COMMISSION PROPOSING HYDROPOWER DEVELOPMENT AND ON PRELIMINARY PERMITS, LICENSES, AND EXEMPTIONS THAT HAVE BEEN ISSUED BY THE COMMISSION

Pursuant to Section 7(a) of the Rivers Act, 16 U.S.C. § 1278(a), the Commission is prohibited from licensing the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works that would be on or directly affecting a river designated in Section 3(a) of the Rivers Act as part of the System (Component River). Section 7(a), through a limitation on the first prohibition, also prohibits the Commission from licensing project works above or below a Component River or on a stream tributary thereto if the project works would invade or diminish the scenic, recreational, and fish and wildlife values present in the Component River.

The Commission has interpreted the prohibitions on licensing of Section 7(a) as applying to the issuance of exemptions. See, e.g., *Swanson Mining Corp.*, 22 FERC ¶61,184 (1983), reh'g denied, 30 FERC ¶61,109 (1985), aff'd, 790 F.2d 96 (D.C. Cir. 1986). The Commission has determined that it is the responsibility of the administering Secretary, not the Commission, to make determinations regarding the consistency of a proposed project with the provisions of the Rivers Act. See *China Flat Company*, 27 FERC ¶61,024 (1984). Since Section 7(a) prohibits only the authorization of construction, the Commission has held that it can issue preliminary permits authorizing the study (but not the construction) of projects to be located on or directly affecting Component Rivers, but the Commission advises permittees that they must reconfigure the project to eliminate any conflict with the Component River. See *Modesto Irrigation District*, 17 FERC ¶61,144 (1981).

A review of the Commission's records indicates that there are no pending applications for license, exemption, or preliminary permit that would be affected by S. 2555. Commission records show no outstanding licenses, exemptions, or preliminary permits for projects on the 8-mile segment described in Section 1 of S. 2555.

There are two licensed projects located downstream of the 8-mile segment: the Exchequer Hydro-Electric Development Project No. 2179, consisting of the Exchequer and McSwain Dams, and the Merced Falls Project No. 2467. The Exchequer Dam is located in Mariposa County and forms Lake McClure, the western (downstream) terminus of the 8-mile segment. The McSwain Dam of the Exchequer Project is in Mariposa County, approximately two miles downstream of the Exchequer Dam. The Merced Falls Project, which is in Merced and Mariposa Counties, approximately 11 miles south of LaGrange, California, is immediately downstream of the McSwain Dam.

The mineral entry withdrawal provisions of Section 2 of S. 2555 do not pertain to the Commission's hydroelectric li-

censing authority. The Saxon Project described in Section 3 of S. 2555 is not a hydroelectric project.

STATEMENT OF CY JAMISON, DIRECTOR, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to discuss S. 2555, a bill to designate a portion of the lower Merced River in California as a Wild and Scenic River.

The Bureau of Land Management supports Wild and Scenic designation for the lower Merced River and would support S. 2555, if amended.

The Bureau of Land Management (BLM) has placed a high priority on the preservation and management of the Merced River. In 1987, the BLM, the Forest Service, and the Park Service conducted a joint study of the eligibility and suitability of the Merced River for inclusion in the wild and scenic river system. The results of that study, published in the Sierra National Forest Land and Resource Management Plan, showed that the river from within Yosemite National Park, across the Sierra and Stanislaus National Forests, and then across public lands administered by the Bureau was eligible and suitable for designation under the Wild and Scenic River Act.

On November 2, 1987 Public Law 100–149 was passed and added 71 miles of the Merced River to the Nation's wild and scenic river system. About 8 miles of the river were placed in study-river status in order to allow the County of Mariposa time to resolve the county's domestic water supply needs from the Merced River. This has been done and the resultant project, the Saxon Creek Project, is authorized in the bill.

S. 2555 would effectively preserve the last 8 undesignated miles of the Merced River; insure a water source for Mariposa County without direct or adverse impact on the river; and allow recreational mining to the extent that such use is consistent with river uses and values. It would establish proper classification of river segments. The map of the river mentioned in the bill apparently sets a reasonable ¼ mile wide boundary for the wild and scenic river corridor.

This legislation reflects the high degree of coordination and cooperation that has occurred among various government agencies: federal, state, local and municipal governments, interest groups and the general public.

We believe this bill is essential to protect, preserve and allow proper management of the lower Merced River. This belief is apparently shared by the public. About ninety percent of public comments received in response to the joint agency study favored wild and scenic designation.

The bill is consistent with the Bureau's land use plan for the Merced River and its provisions are a logical extension of the 1987 legislation.

The boundaries of the segment of the Merced River included in S. 2555 have been developed in the draft management plan for the river. It would be helpful if the bill established those boundaries rather than merely referring to a map.

Sections 2 and 3 of S. 2555 undoubtedly intended to amend the Wild and Scenic Rivers Act. However, that is not what the language of the bill does. We would be happy to work with your staff in developing appropriate amendments.

This concludes my prepared statement. I will be pleased to answer questions.

BILL SUMMARY—S. 2555

Section 1 of the bill would amend Section 3(a) of the Wild and Scenic Rivers Act to include the designation of an 8-mile segment of the Merced River above Lake McClure, California. Administration of the designated segment would be by the Secretary of the Interior, with defined sections being managed as wild or recreational. It would direct the Secretary to make appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District of the Bureau of Land Management, and would authorize the appropriate sums necessary for acquisition of lands, interest in lands and for development.

Section 2 would provide that, in addition to the wild river segments covered by section 9(a)(iii), the recreational river segment on the main stem of the Merced River and the scenic river segment on the South Fork Merced River be withdrawn, subject to valid existing rights, from settlement, location, entry and appropriation under the public land laws, including the mining laws.

Section 3 would provide that consistent with the provisions of this Act, including section 7, the Secretary of the Interior permit the construction and operation of water pumping facilities and associated pipelines for the Saxon Creek Project, a water supply project of the Mariposa County Water Agency.

Sections 2 and 3 refer to sections of "this Act" but do not identify the Act that is being supplemented.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 4687, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

(82 Stat. 906, as amended, 16 U.S.C. 1274 et seq.)

* * * * * * *

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * * * *

[(62)] ( ) MERCED, CALIFORNIA. [The main stem] *(A) The main stem* from its sources (including Red Peak Fork, Merced Peak Fork, Triple Peak Fork, and Lyell Fork) on the south side of Mount Lyell in Yosemite National Park to a point 300 feet upstream of the confluence with Bear Creek, consisting of approximately 71 miles, and the South Fork of the river from its source near Triple Divide Peak in Yosemite National Park to the confluence with the main stem, consisting of approximately 43 miles, both as generally depicted on the map entitled "Merced River Wild and Scenic Rivers—Proposed", dated June 1987, to be administered by the Secretary of Agriculture and the Secretary of the Interior. With respect to the portions of the river designated by this [paragraph] *subparagraph* which are within the boundaries of Yosemite National Park, and the El Portal Administrative Unit, the requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the general management plan for the park, and the boundaries, classification, and development plans for such portions need not be published in the Federal Register. Such revisions to the general management plan for the park shall assure that no development or use of park lands shall be undertaken that is inconsistent with the designation of such river segments. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this [paragraph] *subparagraph* except that no more than $235,000 may be appropriated to the Secretary of Agriculture for the acquisition of lands and interests in lands.

(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure, consisting of approximately 8 miles, as generally depicted on the map entitled "Merced Wild and Scenic River", dated April, 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the point of maximum flood control storage of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16. U.S.C. 1278), and in accordance with other

applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the "Saxon Creek Project", to assure an adequate supply of water from the Merced River to Mariposa County.

(C) With respect to the segments on the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals in Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

SEC. 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

* * * * * * *

( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.

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